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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,968	05/14/2001	Jan Raa	CU-2535 WDD	9869

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EXAMINER

MOHAMED, ABDEL A

ART UNIT PAPER NUMBER

1653

DATE MAILED: 02/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/854,968

Applicant(s)

RAA ET AL

Examiner

Abdel A. Mohamed

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

For Restriction Purpose only

- 1) ☒ Responsive to communication(s) filed on 14 May 2001.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9 and 17-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 9 and 17-32 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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**ACKNOWLEDGMENT TO THE PRELIMINARY AMENDMENT AND THE STATUS
OF THE CLAIMS**

1. The preliminary amendment filed 5/14/01 is acknowledged, entered and considered. In view of Applicant's request claims 1-8 and 10-16 have been canceled. Thus, claims 9 and 17-32 are now pending in the application.

ELECTION/RESTRICTION

Restriction to one of the following inventions is required under 35 U.S.C. 121:

2. I. Claims 9 and 31-32, drawn to a bioactive peptide product and its use, classified in class 514, subclass 2+.
- II. Claims 17-21, drawn to a bioactive peptide composition, classified in class 530, subclass 343.
- III. Claims 22-25, drawn to a process for enhancement of growth of animals and fish, classified in class 424, subclass 439.
- IV. Claims 26-30, drawn to a feed composition or formulation, classified in class 426, subclass 63.

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3. The inventions are distinct, each from the other because:

Inventions II and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product/composition as claimed can be used in a materially different process of using the product/composition such as food processing aid, e.g., as clotting agent in milk or could be used as supplementary food to improve health.

Groups I, II and IV, the formulations/compositions (products) as grouped are independent and distinct, each from the other because they represent different inventive endeavors. The formulation or product of Group I could be a solid or semi-solid formulation useful as pharmaceutical, cleaning agents, personal care, cosmetics, ect.; the composition or product of Group II is a liquid composition useful as food processing aid, e.g., as clotting agent in milk or could be used as supplementary food to improve health; and the composition/formulation or product of Group IV is useful as a feed composition or formulation for animals and fish. Thus, the products of Groups I, II and IV as grouped are independent and distinct inventions which differ in material make up and composition requiring different reaction conditions. Hence, one does not require the other for ultimate use and as such is capable of separate manufacture, use and sale, and is novel and patentable over each other.

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4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and because the searches for individual subject groups are not coextensive, restriction for examination purposes as indicated is proper.

5. A telephone call was made to W. Dennis Drehkoff on 1/24/01 and 1/31/01 to request an oral election to the above restriction requirement, but did not result in an election being made.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

CONCLUSION AND FUTURE CORRESPONDENCE


8. Claims 9 and 17-32 are subject to restriction or election requirement.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abdel A. Mohamed whose telephone number is (703) 308-3966. The examiner can normally be reached on Monday through Friday from 7:30 a.m. to 5:00 p.m. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, can be reached on (703) 308-2923. The appropriate fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.


CHRISTOPHER S. F. LOW
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

 Mohamed/AAM

February 6, 2002